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Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

Twentieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations: AUSTRIA

1. The Committee considered the initial report of Austria (CRC/C/11/Add.14) at its 507th to 509th meetings (see CRC/C/SR.507-509), held on 12 and 13 January 1999, and adopted* the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party and expresses its appreciation for the clear and comprehensive nature of the report, which followed closely the Committee's guidelines. The Committee also takes note of the written answers to the list of issues (CRC/C/Q/AUSTRIA.1) and the additional information provided to it during the course of the dialogue and immediately afterwards, which enabled it to assess the situation of the rights of the child in the State party. The Committee welcomes the constructive and open dialogue with the State party's delegation, which included a student.

* At the 531st meeting, held on 29 January 1999.

B. Positive aspects

3. The Committee commends the State party on its prohibition of all forms of corporal punishment through its 1989 ban on "any type of physical or psychological abuse of children as a means of education" (CRC/C/11/Add.14, para. 256). It also notes additional efforts to increase the protection of children against abuse, including the adoption of a comprehensive list of measures against violence in family and society and of an Action Plan against Child Abuse and against Child Pornography in the Internet. The Committee notes the adoption in August 1998 of a resolution of the European Union Council on Youth Participation, at the proposal of the Austrian presidency.

4. The Committee welcomes the establishment of Ombudsman systems for children and adolescents in each of the nine Länder, and at the federal level.

5. The Committee notes with satisfaction the functioning of a comprehensive pattern of student representation in the school system.

6. The Committee welcomes the adoption of legislation establishing extraterritorial jurisdiction for nationals of the State party involved in the sexual exploitation of children.

C. Principal subjects of concern and the Committee's recommendations

7. The State party maintains two reservations affecting articles 13 and 15, and article 17 of the Convention. The Committee takes note of the commitment of the State party to review its reservations, in the light of the Vienna Declaration and Programme of Action of 1993, with a view to their withdrawal.

8. The Committee is concerned that the federal system in the State party may on occasion pose difficulties for the federal authorities in their effort to implement the provisions of the Convention while ensuring the principle of non-discrimination, in accordance with the provisions of article 2 of the Convention. The Committee urges the State party to ensure that the existing mechanisms of coordination and reliance on general constitutional principles are fully utilized so as to protect children fully from any disparity with respect to areas within the "exclusive competence" of the Länder.

9. The Committee appreciates the diligent review of existing legislation to examine its conformity with the provisions of the Convention, as requested by a 1992 parliamentary resolution. It notes with satisfaction the State party's commitment to submit to a parliamentary hearing a proposal to incorporate the principles and provisions of the Convention in the Constitution, and to invite the parliaments of the Länder to consider the same possibility in the context of regional constitutional reforms. The Committee remains concerned about inconsistencies between domestic legislation and the principles and provisions of the Convention, especially with regard to the right to family reunification and some rights of immigrant, asylum-seeking and refugee children. The Committee recommends that the State party take all necessary measures to

ensure that all its domestic legislation is in full conformity with the principles and provisions of the Convention, and in particular with articles 9, 10, 20 and 22.

10. The Committee is concerned that no governmental body, at the federal or the Land level, seems to have a clear mandate to coordinate and monitor the implementation of the Convention. The Committee recommends that the State party take all appropriate measures to ensure effective coordination and monitoring of activities relating to the implementation of the Convention, at all levels of government.

11. The Committee notes that recent budgetary austerity measures have had an impact on children and may, in particular, affect the more vulnerable and disadvantaged groups. While noting the recent decision to undertake a comprehensive reform of family assistance measures, which should lead to improvements in financial help to families through increased allowances and tax deductions, the Committee remains concerned that other budgetary austerity measures introduced in recent years have not been reversed. While the welfare system can be considered generous, article 4 of the Convention still imposes an obligation to seek further improvements, particularly given the comparatively high level of available resources. The Committee recommends that the State party take all necessary measures to ensure implementation of economic, social and cultural rights to the "maximum extent of available resources".

12. The Committee notes that the State party contributes 0.33 per cent of its gross domestic product (GDP) for international development assistance and has a specific budget line for children-related projects, for example, support to the ILO International Programme for the Elimination of Child Labour. The Committee encourages the State party to consider allocating a fixed percentage of its international development cooperation funds to programmes and schemes for children. The Committee also encourages the State party to strive to achieve the United Nations target of 0.7 per cent of GDP for international development assistance.

13. Cooperation with and involvement of NGOs in the implementation of the Convention, including preparation of the reports, remain limited. The Committee encourages the State party to consider more pro-active measures to involve NGOs in the implementation of the Convention.

14. While noting initial efforts to disseminate the Convention, the Committee considers that education and training activities for professional groups need to be expanded. The Committee recommends that the State party renew its efforts to disseminate the Convention, in appropriate languages, both to children and to a broader public. It also recommends that the State party undertake systematic education and training programmes on the provisions of the Convention for all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers.

15. Austrian law and regulations do not provide a legal minimum age for medical counselling and treatment without parental consent. The Committee is

concerned that the requirement of a referral to the courts will dissuade children from seeking medical attention and be prejudicial to the best interests of the child. The Committee recommends that, in accordance with the provisions of articles 3 and 12 of the Convention, an appropriate age and structures for medical counselling and treatment without parental consent be set by law.

16. The Committee is concerned about remaining instances of gender discrimination. The Committee recommends that the State party consider undertaking an in-depth study of the ages of sexual consent and sexual relations, taking into account present legislation, its implications and its impact on children in the light of the principles and provisions of the Convention, with a view to ensuring that the legislation is as conducive to the realization of the rights of girls as boys and having due regard to the best interests of the child.

17. The Committee regrets that forced sterilization of mentally disabled children is legal with parental consent. The Committee recommends that existing legislation be reviewed so as to make sterilization of mentally disabled children require the intervention of the courts, and that care and counselling services be provided to ensure that this intervention is in accordance with the provisions of the Convention, especially article 3 on the best interests of the child and article 12.

18. While noting that studies are under way concerning possible reforms to the criminal law, the Committee is concerned that existing legislation protects children from sexual exploitation through pornography or prostitution only up to the age of 14. The Committee recommends that the State party take all appropriate measures to ensure that the age of sexual consent does not conflict with the right of all children to be fully protected from exploitation. In this regard, the Committee also encourages continued consideration of the recommendations formulated in the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996.

19. Regarding article 11, the Committee notes with satisfaction that Austria is a party to the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Committee encourages the State party to promote the conclusion of bilateral agreements to the same effect with States that are not parties to the two above-mentioned conventions. The Committee also recommends that maximum assistance be provided through diplomatic and consular channels, in order to solve cases of illicit transfer and non-return of children arising in such States, in the best interests of the children involved.

20. The Committee is concerned about the extended time-frame for the review of placement ordered by the courts for mentally ill children. The Committee encourages the State party, in determining the periodicity for the review of placement, to consider the principles and provisions of the Convention, in particular the best interests of the child.

21. Regional disparities, including differences between rural and urban areas, exist in the provision of rehabilitation services for abused children. The Committee recommends that the State party take all appropriate measures to implement fully the right of the child to physical and psychological recovery and social reintegration, in accordance with article 39 of the Convention.

22. The Committee takes note of the efforts of the State party to integrate children with disabilities by providing a wide range of services. The Committee encourages the State party to continue its efforts to promote the social inclusion of children with disabilities, in accordance with article 23 of the Convention.

23. The Committee is concerned that, in spite of the provision of additional financial resources, the number of places available in services such as kindergarten and pre-school facilities appears to be inadequate. In the light of article 18.3, the Committee recommends that the State party take all appropriate measures to increase the number of places in kindergarten and pre-school facilities, such as day care.

24. The Committee shares the State party's concern that "a large number of children in Austria are living on the edge of poverty" (CRC/C/11/Add.14, para. 373), and the increase in family allowances and tax deductions planned for 1999 and 2000 may not be sufficient to prevent poverty. The Committee recommends that all appropriate measures be taken to prevent poverty in the light of the principles and provisions of the Convention, especially its articles 2, 3, 6, 26 and 27.

25. Noting that in the school curriculum "civic education" incorporates, inter alia, human rights and children's rights, but does not appear to refer specifically to the Convention, the Committee encourages the State party to include specific information on the provisions of the Convention in its school curriculum.

26. The Committee notes that budgetary austerity measures have affected the working of the school system, for example by introducing some family contributions for school books and enrichment activities, or by reducing the choice of optional subjects. The Committee recommends that these measures be examined carefully with regard to their impact on the progressive implementation of the child's right to education and leisure activities, in accordance with articles 28, 29 and 31 of the Convention, and in particular so as to limit their impact on the most vulnerable and disadvantaged groups.

27. Notwithstanding the 1997 Alien's Act requirement to use "more lenient means when minors are involved", the Committee is seriously concerned about legislation which permits the detention of asylum-seeking children pending deportation. The Committee urges the State party to reconsider the practice of detaining asylum-seeking children, and that such children be treated in accordance with the best interests of the child and in the light of the provisions of articles 20 and 22 of the Convention.

28. The Committee is concerned that domestic legislation permits children from the age of 12 to be involved in light work, and recommends that the State party consider ratifying ILO Convention (No. 138) concerning Minimum Age for Admission to Employment and changing its domestic legislation accordingly.

29. With regard to juvenile justice, the Committee remains concerned about the lack of disaggregated statistics on types of offence, length of sentences, length of pre-trial detention, etc. The Committee requests that further information on the situation of children in prison be provided and urges the State party to ensure the full compatibility of the juvenile justice system with the Convention, especially articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

30. While acknowledging the steps taken to ensure the rights of children belonging to minorities, and in particular the projects providing school assistance and linguistic and cultural support to children belonging to the Roma group, the Committee remains concerned about social and other discrimination faced by children belonging to the Roma and other minorities, and in particular by those belonging to groups that do not enjoy the constitutional status of "ethnic groups" (see CRC/C/11/Add.14, para. 517). The Committee recommends that the State party take all appropriate measures to protect and ensure the rights of Roma, Sinti and other minority children, including protection from all types of discrimination, in accordance with articles 2 and 30 of the Convention.

31. Lastly, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the initial report and written replies submitted by the State party be made widely available to the public, along with the summary records of the relevant meetings and the concluding observations adopted by the Committee. Such wide distribution should generate debate and awareness of the Convention and the state of its implementation, particularly within the Government, the relevant ministries, the parliament and non-governmental organizations.